

No. \_\_\_\_\_

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IN THE  
Supreme Court of the  
United States

JEFFREY McCLATCHY,

*Petitioner,*

*v.*

THE STATE OF TEXAS,

*Respondent.*

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ON PETITION FOR A WRIT OF *CERTIORARI*  
TO THE COURT OF CRIMINAL APPEALS OF TEXAS

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APPENDIX TO PETITION  
FOR A WRIT OF *CERTIORARI*

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*ALEXEY V. TARASOV, ESQ.*  
*ATTORNEY FOR PETITIONER*

5211 Reading Road  
Rosenberg, Texas 77471  
Tel.: 832-623-6250

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## **Appendix Item No. 1**

**Decision of the Texas Court of Criminal Appeals denying petitioner's *habeas corpus* petition.**

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS  
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

**FILE COPY**

**1/27/2021**

**MCLATHCY, JEFFREY**

**Tr. Ct. No. 1366887-A**

**WR-92,100-01**

This is to advise that the Court has denied without written order the application for writ of habeas corpus.

Deana Williamson, Clerk

JEFFREY MCLATHCY  
STILES UNIT - TDC # 1909612  
3060 FM 3514  
BEAUMONT, TX 77705

## **Appendix Item No. 2**

**Judgment of the 338th  
District Court of Harris  
County sentencing petitioner  
to 40 years.**



THE STATE OF TEXAS

v.

MCLATHCY, JEFFREY

STATE ID No.: TX07977879

§  
§  
§  
§  
§  
§  
§

IN THE 338TH DISTRICT

COURT

HARRIS COUNTY, TEXAS

80

## JUDGMENT OF CONVICTION BY COURT—WAIVER OF JURY TRIAL

|  |  |   |   |
|--|--|---|---|
| Judge Presiding:   | HON. BROCK THOMAS                            | Date Judgment Entered:                                      | 2/5/2014  |
| Attorney for State:  | Jamie Felicia/Tiffany Dupree                 | Attorney for Defendant:                                     | WENTZ, KURT BUDD  |
| Offense for which Defendant Convicted:<br><b>AGGRAVATED SEXUAL ASSAULT</b> |  |   |   |
| Charging Instrument:<br><b>INDICTMENT</b>                                  |  | Statute for Offense:<br><b>N/A</b>                          |   |
| Date of Offense:<br><b>11/3/2012</b>                                       |  |   |   |
| Degree of Offense:<br><b>1ST DEGREE FELONY</b>                             |  | Plea to Offense:<br><b>GUILTY</b>                           | Findings on Deadly Weapon:<br><b>YES, NOT A FIREARM</b> |
| Terms of Plea Bargain:<br><b>WITHOUT AN AGREED RECOMMENDATION</b>          |  |   |   |
| Plea to 1 <sup>st</sup> Enhancement Paragraph:                             | <b>N/A</b>                                   | Plea to 2 <sup>nd</sup> Enhancement/Habitual Paragraph:     | <b>N/A</b>  |
| Findings on 1 <sup>st</sup> Enhancement Paragraph:                         | <b>N/A</b>                                   | Findings on 2 <sup>nd</sup> Enhancement/Habitual Paragraph: | <b>N/A</b>  |
| Date Sentence Imposed:   | <b>2/5/2014</b>                              | Date Sentence to Commence:                                  | <b>2/5/2014</b>   |
| Punishment and Place of Confinement:                                       | <b>40 YEARS INSTITUTIONAL DIVISION, TDCJ</b> |   |   |

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .

|        |              |              |   |
|--------|--------------|--------------|---|
| Fine:  | Court Costs: | Restitution: | Restitution Payable to:   |
| \$ N/A | \$ 489.00    | \$ N/A       | <input type="checkbox"/> VICTIM (see below) <input type="checkbox"/> AGENCY/AGENT (see below) |

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62

The age of the victim at the time of the offense was ~~N/A~~ 44 years

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

|                |            |    |            |      |  |    |  |
|----------------|------------|----|------------|------|--|----|--|
| From           | 11/03/2012 | to | 02/05/2014 | From |  | to |  |
| Time Credited: | From       |    | to         | From |  | to |  |
|                | From       |    | to         | From |  | to |  |

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in Harris County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

- ☒ Defendant appeared in person with Counsel.  
☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

Both parties announced ready for trial. Defendant waived the right of trial by jury and entered the plea indicated above. The Court then admonished Defendant as required by law. It appeared to the Court that Defendant was mentally competent to stand trial, made the plea freely and voluntarily, and was aware of the consequences of this plea. The Court received the plea and

App. Pg. No. 6

entered it of record. Having heard the evidence submitted, the Court found Defendant guilty of the offense indicated above. In the presence of Defendant, the Court pronounced sentence against Defendant.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

**Punishment Options (select one)**

☒ **Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the **Director, State Jail Division, TDCJ**. The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the **Sheriff of Harris County, Texas** on the date the sentence is to commence. Defendant shall be confined in the **Harris County Jail** for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the **Office of the Harris County District Clerk**. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

**Execution / Suspension of Sentence (select one)**

☒ The Court **ORDERS** Defendant's sentence **EXECUTED**.

☐ The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

**Furthermore, the following special findings or orders apply:**

**Deadly Weapon.**

The Court **FINDS** Defendant used or exhibited a deadly weapon, namely, A KNIFE, during the commission of a felony offense or during immediate flight therefrom or was a party to the offense and knew that a deadly weapon would be used or exhibited. TEX. CODE CRIM. PROC. art. 42.12 §3g.

Signed and entered on February 05, 2014

**BROCK THOMAS**  
JUDGE PRESIDING

Notice of Appeal Filed: \_\_\_\_\_

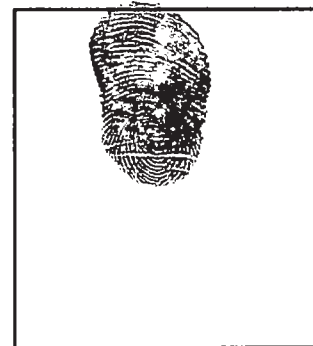
Mandate Received: \_\_\_\_\_ Type of Mandate: \_\_\_\_\_

After Mandate Received, Sentence to Begin Date is: \_\_\_\_\_

Jail Credit: \_\_\_\_\_

Def. Received on \_\_\_\_\_ at \_\_\_\_\_ ☐ AM ☐ PM

By: \_\_\_\_\_, Deputy Sheriff of Harris County



Right Thumbprint

Clerk: C HARPER

Case Number: 136688701010

Defendant: MCLATHCY, JEFFREY

FIN (CAS 20.10): 112 EN/KR04: 999 LCBT: ✓ LCBU: ✓ EN/KR18: 999/✓

**App. Pg. No. 7**

## **Appendix Item No. 3**

**Charging instrument  
commencing petitioner's  
criminal prosecution.**



338

02556316

2012

THE STATE OF TEXAS  
VS.

02556316

JEFFREY MCCLATHCY  
10600 SIX PINES DR. #732  
THE WOODLANDS, TX 77380

SPN:  
DOB: WM 7-12-93  
DATE PREPARED: 11/4/2012

Transf. Pend

D.A. LOG NUMBER: 1905761  
CJIS TRACKING NO.: 9168231326-A002  
BY: BJE DA NO: 050788045  
AGENCY: HCSO  
O/R NO: HC12152229  
ARREST DATE: 11-3-12

NCIC CODE: 1109 33

RELATED CASES: DEF - ONE OTHER FEL.

FELONY CHARGE: Aggravated Sexual Assault of an Adult

CAUSE NO:

HARRIS COUNTY DISTRICT COURT NO:

FIRST SETTING DATE:

1366887338

BAIL: \$50,000.00  
PRIOR CAUSE NO:

## IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

Before me, the undersigned Assistant District Attorney of Harris County, Texas, this day appeared the undersigned affiant, who under oath says that he has good reason to believe and does believe that in Harris County, Texas, **JEFFREY MCLATHCY**, hereafter styled the Defendant, heretofore on or about **NOVEMBER 3, 2012**, did then and there unlawfully intentionally and knowingly cause the penetration of the ANUS of **HEIDI CARLISLE**, hereinafter called the Complainant, by placing HIS SEXUAL ORGAN in the ANUS of the Complainant, without the consent of the Complainant, namely, the Defendant compelled the Complainant to submit and participate by the use of physical force and violence, and in the course of the same criminal episode, the Defendant used and exhibited a deadly weapon, namely A KNIFE.

It is further presented that in Harris County, Texas, **JEFFREY MCCLATCHY**, hereafter styled the Defendant, heretofore on or about **NOVEMBER 3, 2012**, did then and there unlawfully intentionally and knowingly cause the penetration of the SEXUAL ORGAN of **HEIDI CARLISLE**, hereinafter called the Complainant, by placing HIS SEXUAL ORGAN in the SEXUAL ORGAN of the Complainant, without the consent of the Complainant, namely, the Defendant compelled the Complainant to submit and participate by the use of physical force and violence, and in the course of the same criminal episode, the Defendant used and exhibited a deadly weapon, namely A KNIFE.

**FILED**

Chris Daniel  
District Clerk

NOV 04 2012

Time: 24:06 AM

By: [Signature]  
Deputy

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Sworn to and subscribed before me on November 4, 2012

[Signature]  
AFFIANT

[Signature]  
ASSISTANT DISTRICT ATTORNEY OF HARRIS COUNTY, TEXAS. BAR NO.

COMPLAINT

App. Pg. No. 9

## **Appendix Item No. 4**

**Carlisle v. Frisbie Memorial  
Hospital, 152 N.H. 762 (2005).**

NOTICE: This opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Reporter, Supreme Court of New Hampshire, One Noble Drive, Concord, New Hampshire 03301, of any editorial errors in order that corrections may be made before the opinion goes to press. Errors may be reported by E-mail at the following address: [reporter@courts.state.nh.us](mailto:reporter@courts.state.nh.us). Opinions are available on the Internet by 9:00 a.m. on the morning of their release. The direct address of the court's home page is: <http://www.courts.state.nh.us/supreme>.

THE SUPREME COURT OF NEW HAMPSHIRE

---

Strafford

No. 2004-555

HEIDI CARLISLE

v.

FRISBIE MEMORIAL HOSPITAL & a.

Argued: September 15, 2005

Opinion Issued: November 30, 2005

Backus, Meyer, Solomon & Branch LLP, of Manchester (Jon Meyer on the brief and orally), for the plaintiff.

McDonough & O'Shaughnessy, P.A., of Manchester (Michael B. O'Shaughnessy and Robert J. Meagher on the brief, and Mr. Meagher orally), for the defendants.

Galway, J. This appeal follows a jury trial in Superior Court (Mohl, J.) awarding a verdict for the plaintiff, Heidi Carlisle, on her claims against the defendants, Frisbie Memorial Hospital (Frisbie) and John Jackson, M.D. We affirm.

On appeal, the defendants argue that the trial court erred by: (1) submitting to the jury the plaintiff's professional negligence claim, her claims under the federal Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd (2000), and her claims under the New Hampshire Patients' Bill of Rights Act (PBR), RSA 151:19-:31 (1996); (2) submitting erroneous jury instructions on EMTALA,

professional negligence, and damages; (3) refusing to allow Dr. Jackson's discovery deposition to be read into evidence at trial; and (4) refusing to grant defendants' motion for remittitur.

The jury could have found the following facts. The plaintiff had a history of alcohol abuse and mental illness. When she drank alcohol, it often elicited feelings of depression and thoughts of a sexual assault that she experienced as a teenager.

During the day of May 6, 2000, the plaintiff consumed alcohol. That evening, she drank more alcohol and became increasingly depressed and suicidal. Desiring treatment for her condition, she drove to Frisbie's emergency room at approximately midnight. She chose Frisbie because it was nearby and because she knew that it advertised mental health services.

Upon arrival, a hospital employee led the plaintiff to an examining room. Dr. Jackson, the department physician on duty, saw her a few minutes later. She told him that she had been drinking and had suicidal thoughts involving hanging herself. He asked if she wanted to see a counselor from the Strafford Guidance Center, an organization that treats patients with mental illnesses in the hospital. She declined the offer, stating that she was involved with the Strafford Guidance Center through her work. She told him that she would see any other counselor or psychologist. He then left the room. He returned a few minutes later and asked, again, if she would see Strafford Guidance. She again declined. He told her that he was going to get her help and left the room. She testified that she assumed he meant that he was going to find another counselor or psychologist; she had not acted in a disruptive or disorderly manner during her interactions with him. After he left, she was alone in the examining room and did not attempt to leave.

During one of the two intervals in which Dr. Jackson left the room, he called the police. He never told the plaintiff that he intended to do so. After he exited the room for the second time, the next person into the room was Officer Macaione of the Rochester Police Department. The plaintiff asked Officer Macaione what he was doing there, and he responded by asking her questions regarding her alcohol consumption, her suicidal thoughts, and whether she would take a blood-alcohol test. She answered that she was intoxicated, that she had suicidal thoughts, and that she thought a blood-alcohol test was a waste of time and money, since she admitted to being drunk. Officer Macaione then informed her that he was going to take her to jail, and handcuffed her.

Another officer arrived at the hospital to assist Officer Macaione. Outside of the plaintiff's presence, Dr. Jackson gave one of the officers a note, stating, "Heidi Carlisle is medically cleared to enter protective custody for suicidal intent and alcohol

intake." Officer Macaione then led the plaintiff out of the hospital. On the way out, the plaintiff saw Dr. Jackson. She told him that she disliked him and that she hated him for calling the police and having her taken to jail. The plaintiff testified that, had Dr. Jackson informed her that jail was the alternative, she would have agreed to see a counselor from Strafford Guidance Center. Upon exiting the hospital, she felt depressed and betrayed because he never warned her of the possibility of going to jail. She also felt embarrassed as people watched Officer Macaione lead her out of the hospital.

Officer Macaione drove the plaintiff to the Strafford County Jail at approximately 1:00 a.m. A guard at the jail kicked her feet apart, frisked her, then searched her. She asked if she could make a phone call, and the guard said "no." The guard placed her in a cell with a concrete slab for a bed, a toilet, and a sink. There was another woman in the cell, who was asleep on the bed. When the plaintiff used the toilet, she was exposed to both the woman in the cell and anyone walking by in the hallway. She was in the jail cell for approximately fourteen hours without food, water, or medical treatment. During that time, she felt betrayed, depressed, and confused about why she was there. A counselor from Strafford Guidance Center met her at the jail on the afternoon of May 7. After their meeting, the police released her.

As a result of the events of May 6 and 7, the plaintiff's mental illness worsened. Her therapist testified that her experience at Frisbie made her reluctant to trust any medical professionals or see a therapist. The plaintiff also testified that the betrayal that she felt after seeing Dr. Jackson made her postpone seeing a therapist for months. During that time, she drank more heavily, and her depression and thoughts of suicide intensified. Her mental state affected the quality of her work and caused her to miss work at the child care business that she ran. The plaintiff also resigned from her job at the local fire department because she anticipated being fired after showing up to work intoxicated. She experienced a loss of appetite and, on multiple occasions, called a friend late at night crying because of the betrayal that she felt at Frisbie.

The plaintiff brought three causes of action against the defendants: (1) violation of EMTALA against Frisbie; (2) professional negligence against Dr. Jackson; and (3) violation of the PBR against Frisbie. The jury found for the plaintiff on all three counts.

## I. EMTALA

An overview of the EMTALA statute gives context to our determinations below. Enacted in 1986, EMTALA requires that hospitals receiving the benefit of federal Medicare funding take certain steps to ensure appropriate care for emergency room patients. Correa v. Hospital San Francisco, 69 F.3d 1184, 1189 (1st Cir.

1995); see also 42 U.S.C. § 1395dd; Furrow, An Overview and Analysis of the Impact of the Emergency Medical Treatment and Active Labor Act, 16 J. Legal Med. 325, 325-26 (Sept. 1995). The first step that EMTALA requires emergency rooms to take is to properly screen, or examine, all patients admitted to the emergency room seeking medical assistance. Correa, 69 F.3d at 1190; see also 42 U.S.C. § 1395dd(a). If the patient has an emergency medical condition, EMTALA requires that the hospital either examine and treat the patient as necessary to stabilize the patient's condition, or transfer the patient to another medical facility when such a transfer is relatively safe and medically advisable. Correa, 69 F.3d at 1190; see also 42 U.S.C. § 1395dd(b)(1)(B), (c)(1). To establish a violation of EMTALA, the plaintiff must prove:

(1) that the hospital is a participating hospital, covered by EMTALA, that operates an emergency department (or an equivalent treatment facility); (2) the patient arrived at the facility seeking treatment; and (3) the hospital either (a) did not afford the patient an appropriate screening in order to determine if she had an emergency medical condition, or (b) bade farewell to the patient (whether by turning her away, discharging her, or improvidently transferring her) without first stabilizing the emergency medical condition.

Correa, 69 F.3d at 1190.

#### A. Waived Objections

Frisbie asserts that the plaintiff did not present sufficient evidence from which a reasonable jury could find that she satisfied the following two elements of an EMTALA claim: first, that Frisbie was a "participating hospital" under EMTALA; and, second, that Frisbie improperly "transferred" the plaintiff. Id. The plaintiff argues that Frisbie waived these issues and is precluded from raising them on appeal. We agree.

The well-established rule is that an objection to the sufficiency of evidence is waived unless taken at a time when there may still be an opportunity to supply the deficiency . . . [T]he defendant could not lie by until after the evidence, arguments, and charge to the jury were closed, and then first avail himself of an objection that was open to him, and which in fairness he ought to have taken as soon as the evidence for the plaintiff was closed, or, at latest, when the evidence was closed on both sides.

Derosier v. New England Telephone & Telegraph Co., 82 N.H. 405, 405-06 (1926) (citations and quotations omitted); 5 R. Wiebush, New Hampshire Practice, Civil Practice and Procedure § 48.12, at 331 (1984) (stating, "[a] Motion for Directed Verdict may be filed at any time after all the evidence for the moving party's

opponent has been presented and before the case is taken under advisement or the jury is charged").

Frisbie failed to raise its sufficiency of the evidence objections regarding either "participation" or "transfer" until after the trial court gave the jury instructions. The record reveals ample opportunity for Frisbie to have raised objections regarding the plaintiff's proof of participation and improper transfer prior to that point. For instance, after the close of plaintiff's evidence, Frisbie moved for directed verdict, raising such issues as the PBR, damages, RSA 239:1, RSA 172-B:1, and deterioration of condition under EMTALA. Additionally, the trial court gave Frisbie the opportunity to renew its motion for directed verdict at the close of its case. Frisbie did so, but again failed to raise either "participation" or improper "transfer." By waiting to raise its sufficiency of the evidence objections until after the jury instruction, Frisbie deprived the trial court of opportunities to expediently correct the deficiency of evidence. Frisbie, "[lay] by until after the evidence, arguments, and charge to the jury were closed," and then raised its objections. Derosier, 82 N.H. at 406. We conclude, therefore, that Frisbie waived its objections regarding the sufficiency of evidence presented to support the "participation" and improper "transfer" elements of EMTALA.

#### B. Stabilization

Frisbie appeals the trial court's denial of its motion for directed verdict, arguing that the plaintiff failed to present evidence from which a reasonable jury could find that Frisbie did not "stabilize" the plaintiff under EMTALA.

Our review of a trial court's denial of a motion for a directed verdict is extremely narrow. We will uphold a denial of the motion where sufficient evidence in the record supports the ruling. A party is entitled to a directed verdict only when the sole reasonable inference that may be drawn from the evidence, which must be viewed in the light most favorable to the nonmoving party, is so overwhelmingly in favor of the moving party that no contrary verdict could stand.

Carignan v. N.H. Int'l Speedway, 151 N.H. 409, 413-14 (2004) (quotations and citations omitted).

Frisbie disputes prong (3)(b) of the Correa test, which requires the plaintiff to prove that she arrived at the hospital with an "emergency medical condition" and that the defendants either turned her away, discharged her, or improperly transferred her without first "stabilizing" her "emergency medical condition." Correa, 69 F.3d at 1190.



We first consider whether the evidence supports a finding that the plaintiff had an "emergency medical condition" under EMTALA. EMTALA defines an "emergency medical condition" as:

a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in – (i) placing the health of the individual . . . in serious jeopardy, (ii) serious impairment of bodily functions, or (iii) serious dysfunction of any bodily organ or part . . . .

42 U.S.C. § 1395dd (e)(1)(A). "Under this definition, a patient will suffer from an emergency medical condition if he is in imminent danger of death or serious disability." Pagan-Pagan v. Hospital San Pablo, Inc., 97 F. Supp. 2d 199, 203 (D. P.R. 2000) (quotations omitted).

Frisbie argues that the plaintiff's depression was not an "emergency medical condition," and that the plaintiff provided insufficient evidence to prove otherwise. The plaintiff's evidence of her emergency medical condition includes her testimony that she arrived at Frisbie intoxicated and feeling suicidal with a plan to carry out her suicide. She presented expert testimony that intoxicated, suicidal patients are common in emergency rooms, that they pose a health risk to themselves, and that they require persistent monitoring in safe rooms. She also presented expert testimony that emergency room physicians monitor intoxicated patients' vital signs to check for seizure or other serious effects of alcohol withdrawal. Further, an expert witness of the defendants testified that there was an "overriding concern about the patient's safety." The trial court found the above evidence sufficient to support a finding that the plaintiff's health was in imminent danger. We agree.

We next consider the evidence regarding whether Frisbie properly "stabilized" the plaintiff before transferring her out of the hospital. EMTALA defines "stabilize" as "to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility . . . ." 42 U.S.C. § 1395dd(e)(3)(A). A psychiatric patient is considered stable for purposes of discharge under EMTALA "when he/she is no longer considered to be a threat to him/herself or others." Thomas v. Christ Hosp. and Medical Center, 328 F.3d 890, 893 (7th Cir. 2003) (applying the Health Care Financing Administration's definition of stability for psychiatric patients).

The evidence supporting the plaintiff's assertion that the hospital failed to stabilize her included expert testimony from a defense witness that "[t]his patient needed stabilizing of her suicidal ideation and plan, and she also needed stabilization of her



intoxication with alcohol." When asked whether the plaintiff was psychiatrically unstable when she left the hospital for protective custody, defendants' expert witness testified, "Yes, and that is why she was placed in protective custody, because her psychiatric instability was a threat to her life." The medical records from Frisbie state that the plaintiff's disposition was "transferred to jail," that her condition was "unchanged," and a box entitled "stable" was unchecked. Additionally, the plaintiff testified that the only steps that Dr. Jackson took to treat her condition before calling the police were to perform a brief examination and offer for her to see Strafford Guidance.

Reviewed in the light most favorable to the plaintiff, the evidence is not so overwhelmingly in favor of Frisbie that no verdict contrary to Frisbie's could stand. We therefore agree with the trial court's decision to deny Frisbie's motion for directed verdict.

### C. Preemption – Justification

Frisbie argues that, as a matter of law, EMTALA does not preempt state statutes; therefore, a state statute that justifies Frisbie's conduct should bar it from civil liability, even if the state statute conflicts with EMTALA. Frisbie argues that RSA 172-B:3 (1994) justifies Frisbie in contacting the police to take the plaintiff into protective custody.

The trial court's determination of preemption is a matter of law, which we review de novo. Koor Communication v. City of Lebanon, 1, 148 N.H. 618, 620 (2002). "Under the Supremacy Clause of the Federal Constitution, state law is preempted where: (1) Congress expresses an intent to displace state law; (2) Congress implicitly supplants state law by granting exclusive regulatory power in a particular field to the federal government; or (3) state and federal law actually conflict." Id. (quotations omitted).

EMTALA's preemption provision provides, "The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section." 42 U.S.C. § 1395dd(f). Frisbie's argument that EMTALA disclaims all preemption of state laws is incorrect. The provision explicitly states that when EMTALA and a state law conflict, EMTALA preempts the state law. "An actual conflict exists when it is impossible for a private party to comply with both state and federal requirements or where state law stands as an obstacle to the accomplishments and execution of the full purpose and objective of Congress." Koor, 148 N.H. at 621 (quotations omitted).

We now address Frisbie's claim that EMTALA does not preempt RSA 172-B:3. RSA 172-B:3 provides:

I. When a peace officer encounters a person who in the judgment of the officer is intoxicated . . . the officer may take such person into protective custody and shall take whichever of the following actions is, in the judgment of the officer, the most appropriate to ensure the safety and welfare of the public, the individual, or both:

. . . .

c. Lodge the person in a local jail or county correctional facility for said person's protection, for up to 24 hours or until the keeper of said jail or facility judges the person to be no longer intoxicated.

Frisbie argues that, as a matter of law, RSA 172-B:3, I(c) justified its conduct in contacting the police. Frisbie contends that RSA 172-B:3, I(c) permitted the defendants to call the police for the purpose of taking the plaintiff out of Frisbie and putting her in jail.

Applying the definition of "actual conflict," we determine that there was an actual conflict between EMTALA and the conduct that Frisbie argues RSA 172-B:3, I(c) permits. It is well established that one of Congress' purposes in enacting EMTALA was to prevent hospitals from transferring patients without first assessing or stabilizing the patients' emergency conditions. E.g., Rodriguez v. American Intern. Ins. Co. of Puerto Rico, 402 F.3d 45, 47 (1st Cir. 2005). To accomplish this goal, EMTALA provides that a hospital must stabilize a patient before transferring that patient, except in limited circumstances, none of which Frisbie claims occurred. 42 U.S.C. § 1395dd(c)(1). For a hospital to summon a police officer for the purpose of removing an intoxicated, unstabilized person from the hospital and take that person to jail before that person is stabilized would stand as an obstacle to the execution of Congress' purpose in enacting EMTALA, because it would permit the hospital to ignore EMTALA's stabilization requirement. Under the circumstances of this case, we determine that RSA 172-B:3 conflicted with EMTALA, and that EMTALA preempted it.

#### D. Preemption - Jury Instruction

Frisbie argues that the following portion of the trial court's jury instruction on EMTALA misled the jury: "[Y]ou must find that the hospital failed to transfer the plaintiff to a medical facility for appropriate medical treatment." Frisbie argues that this instruction essentially directed a verdict for the plaintiff and ignored the other statutes that could have applied to transferring the plaintiff out of the hospital.

We review the adequacy of jury instructions as follows:

The purpose of jury instructions is to identify issues of material fact, and to inform the jury of the appropriate legal standards by which it is to resolve them. A jury charge is sufficient as a matter of law if it fairly presents the case to the jury such that no injustice is done to the legal rights of the parties. In a civil case, we review jury instructions in context to determine if the charge, taken in its entirety, fails to explain adequately the law applicable to the case in such a way that the jury could have been misled.

Broughton v. Proulx, 152 N.H. \_\_\_, \_\_\_, 880 A.2d 388, 394 (2005).

By isolating one sentence of the trial court's EMTALA instruction, Frisbie characterizes the instruction as a command from the court requiring the jury to find an inappropriate transfer. Examining the disputed instruction in context, we conclude that the trial court stated it as one element required for proving an EMTALA violation. The trial court instructed the jury that there are three elements required for proving an EMTALA violation: (1) "you must first find that the plaintiff presented to the emergency room with an emergency medical condition"; (2) "next you must find that the plaintiff was transferred from an emergency room before her emergency condition stabilized"; and (3) the disputed instruction.

We disagree with Frisbie's argument that the disputed jury instruction is an incorrect statement of law. EMTALA requires that, "if an emergency medical condition exists, the participating hospital must render the services that are necessary to stabilize the patient's condition . . . unless transferring the patient to another facility is medically indicated and can be accomplished with relative safety." Rodriguez, 402 F.3d at 47. The disputed instruction, and the two elements that the trial court stated before it, encompassed EMTALA's requirements. As for the disputed instruction, transfer from a hospital is an option under EMTALA, but it must be to another medical facility or the hospital has violated EMTALA. See id. The disputed jury instruction adequately stated this requirement. We therefore conclude that the trial court's instruction accurately explained the law of EMTALA in such a way that the jury could not have been misled.

## II. Professional Negligence

### A. RSA 329:31

Dr. Jackson first argues that the plaintiff's professional negligence claim should not have gone to the jury because, as a matter of law, RSA 329:31 (1995) provides a complete defense to civil liability. Entitled, "Civil Liability; Duty to Warn," RSA 329:31 provides:

I. A physician licensed under this chapter has a duty to warn of, or to take reasonable precautions to provide protection from, a client's violent behavior when the client has communicated to such physician a serious threat of physical violence against a clearly identified or reasonably identifiable victim or victims, or a serious threat of substantial damage to real property.

II. The duty may be discharged by, and no monetary liability or cause of action may arise against, a physician licensed under this chapter if the physician makes reasonable efforts to communicate the threat to the victim or victims, notifies the police department closest to the client's or potential victim's residence, or obtains civil commitment of the client to the state mental health system.

Dr. Jackson argues that the plaintiff's statement that she had contemplated suicide was a "serious threat of physical violence" and made her a "clearly identified victim" under RSA 329:31, I. Therefore, Dr. Jackson concludes, he was not negligent in calling the police because RSA 329:31, II required him to do so to satisfy his statutorily created duty to warn.

We apply the following standard of review for statutory interpretation:

The interpretation of a statute is a question of law, which we review de novo. We are the final arbiters of the legislature's intent as expressed in the words of the statute considered as a whole. We first examine the language of the statute, and, where possible, ascribe the plain and ordinary meanings to the words used. When a statute's language is plain and unambiguous, we need not look beyond it for further indication of legislative intent, and we will not consider what the legislature might have said or add language that the legislature did not see fit to include.

Woodview Dev. Corp. v. Town of Pelham, 152 N.H. 114, 116 (2005) (citations omitted). "If a statute is ambiguous, however, we consider legislative history to aid our analysis. Our goal is to apply statutes in light of the legislature's intent in enacting them, and in light of the policy sought to be advanced by the entire statutory scheme." Hughes v. N.H. Div. of Aeronautics, 152 N.H. 30, 38-39 (2005).

A plain reading of RSA 329:31 reveals that the statute does not apply to threats of suicide. We have previously recognized that "[t]he subject matter embraced by RSA 329:31 is limited to a physician's duty to warn of a client's violent behavior when the client has communicated a serious threat of physical violence against a clearly identified or reasonably identifiable victim." Powell v. Catholic Med. Ctr., 145 N.H. 7, 11 (2000). There is no warning necessary for a threat of suicide, because the potential attacker and potential victim are the same person. The victim already knows of the danger.

Further, one way in which RSA 329:31 allows a physician to satisfy the duty to warn is to "make[] reasonable efforts to communicate the threat to the victim." RSA 329:31, II. It would be illogical for the statute to allow doctors to discharge their duties of protecting the victim simply by informing potential suicide victims that they have threatened to kill themselves. We will not interpret the statutory scheme to yield this seemingly illogical result. Town of Lyndeborough v. Boisvert Properties, 150 N.H. 814, 819 (2004).

Even if there is ambiguity in RSA 329:31, our interpretation comports with the legislative intent for the statute. The House and Senate enacted RSA 329:31 as part of a bill entitled "An Act Relative to a Duty to Protect Third Persons." Laws 1986, ch. 175. The context in which the legislature intended RSA 329:31's duty of care to arise was clearly when a patient threatened a third person. Additionally, we note that the House Judiciary Committee's report on the bill containing RSA 329:31 states, "This bill limits the civil liability of certain medical and mental health providers . . . so long as the providers contact the threatened victim, or the police, or seek civil commitment." N.H.H.R. Jour. 622 (1986). This language shows that the legislature intended to reduce the liability of medical professionals by providing them with a manner in which they could satisfy their duties to warn. It would be contrary to our goal of advancing the policies of a statutory scheme to interpret RSA 329:31 as imposing on physicians a duty to warn potential suicide victims of their own threats to kill themselves. Doing so would increase, rather than decrease, physician liability by creating a potential cause of action for patients who subsequently commit suicide. For the above reasons, the trial court did not err in declining to adopt Dr. Jackson's interpretation of RSA 329:31 as a complete defense to liability in this case.

#### B. RSA Chapter 627

Dr. Jackson argues that the plaintiff's professional negligence claim should not have gone to the jury because RSA chapter 627 (1996) provided a complete defense to civil liability. Dr. Jackson primarily relies on RSA 627:6, VI, which states: "A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious bodily injury upon himself may use a degree of force on such person as he reasonably believes to be necessary to thwart such a result." Dr. Jackson argues that he sufficiently proved that he had a reasonable belief that the minimal force involved with protective custody was reasonably necessary to thwart the plaintiff's potential suicide. Dr. Jackson raised this argument in his motion for judgment notwithstanding the verdict below.

"Motions for directed verdict and motions for judgment notwithstanding the verdict are essentially the same, though made at different stages of the trial, and they are governed by identical standards." Thompson v. The H.W.G. Group, Inc., 139 N.H.

698, 699, (1995). We therefore apply the same standard for sufficiency of the evidence that we used to address Frisbie's motion for directed verdict.

RSA 627:6, VI requires that the defendant believe that the degree of force he uses to thwart an attempt at suicide be reasonably necessary, which we determine using an objective standard. State v. Leaf, 137 N.H. 97, 99 (1993). A belief that is unreasonable, even though honest, will not support this defense. Id. It is for the jury to determine whether the belief, even though honest, was in fact reasonable under all the circumstances. Id.

For Dr. Jackson to prevail on appeal, he must show that the sole reasonable inference that may be drawn from the evidence presented at trial is that he objectively believed that he applied a degree of force reasonably necessary to thwart the plaintiff's attempt at suicide. To support his argument, Dr. Jackson simply states that whether his use of force was reasonably necessary "should be undisputed, as the plaintiff in fact did not commit suicide." We disagree. At trial, the plaintiff presented two expert witnesses who stated that there were less harmful ways in which Dr. Jackson could have treated the plaintiff and kept her safe from harm. These experts testified that Dr. Jackson violated his duty of care by placing the plaintiff in protective custody instead of pursuing other treatment options. Viewing this evidence in the light most favorable to the plaintiff, we find that the evidence is not so overwhelmingly in favor of the defendant that no contrary verdict could stand. The trial court, therefore, did not commit an unsustainable exercise of discretion when it denied Dr. Jackson's motion for judgment notwithstanding the verdict.

### C. Jury Charge

Dr. Jackson argues that the trial court's jury instruction regarding professional negligence was erroneous as a matter of law. Specifically, he asserts that the instruction: (1) erroneously imposed upon him a duty to hold the plaintiff against her will at the hospital; and (2) erroneously granted rights to caregivers, contrary to section IX of the PBR.

We review the jury instruction under the standard from Broughton, 152 N.H. at \_\_\_, 880 A.2d at 394-95, that we set forth above.

The trial court gave the following jury instruction:

Under New Hampshire law, a physician is authorized to use chemical and physical restraints on a patient when he or she authorizes it in writing, for a specific and limited time necessary to protect a patient or others from injury. In an emergency,



restraints may be authorized by the designated professional staff member in order to protect the patient or others from injury.

This jury instruction is based upon section IX of the PBR, which states, in pertinent part:

The patient shall be free from chemical and physical restraints except when they are authorized in writing by a physician for a specific and limited time necessary to protect the patient or others from injury. In an emergency, restraints may be authorized by the designated professional staff member in order to protect the patient or others from injury.

RSA 151:21, IX.

Dr. Jackson points to no language in the disputed jury instruction that imposed a duty upon him, particularly any duty not already imposed by the PBR. Further, the words "duty" or "shall" are not present in the disputed instruction. Generally, it is the word "shall" that imposes a duty in statutory language. American Exp. Travel v. Moskoff, 144 N.H. 190, 191 (1999); see also Town of Hudson v. Baker, 133 N.H. 750, 752 (1990). Dr. Jackson does not explain why he believes the trial court's charge creates a duty, and we can find no language in the charge that does so.

Dr. Jackson next argues that the trial court's instruction granted rights to caregivers when the PBR does not grant any rights to caregivers to restrain patients contrary to the PBR. We conclude that Dr. Jackson has misinterpreted the PBR. The second sentence of the disputed instruction and the second sentence of section IX of the PBR are identical. Both grant caregivers the right to protect the patient or others from injury by restraining the patient. Since the trial court quoted from a statute allowing physicians to restrain patients, it is untenable for Dr. Jackson to argue that the instructions were erroneous because they misled the jury into thinking that physicians have a right to restrain patients.

We therefore conclude that Dr. Jackson failed to prove that the instruction inadequately explained the law applicable to the case in such a way that the jury could have been misled. The charge fairly presented the case to the jury such that no injustice was done to the legal rights of the parties.

### III. Patients' Bill of Rights

Frisbie argues that the trial court erred by interpreting the PBR as creating an independent cause of action. There was no basis, Frisbie asserts, for the trial court to find that the legislature intended to create a private right of action under the PBR that

would be independent from a standard medical negligence claim. Frisbie relies upon In re "K", 132 N.H. 4 (1989), for this proposition, arguing that this case states in dicta that the PBR does not purport to establish a standard of care in a professional negligence action under RSA chapter 507-E (1997).

We apply the standards for statutory interpretation that we set forth above. Woodview, 152 N.H. at 116; Hughes, 152 N.H. at 38-39.

Frisbie's argument that the PBR does not establish a private right of action is incorrect. The PBR explicitly provides for private relief against a hospital. Entitled "Equitable and Other Relief," RSA 151:30 provides that "[d]amages shall be assessed in a proceeding against a facility which violates this subdivision and the facility shall be liable for . . . all damages proximately caused by the violations." RSA 151:30, II. Frisbie's reliance upon In re "K", therefore, is misplaced, because the statutory language plainly establishes a private cause of action for violation of the PBR, which is separate from the question of whether there was professional negligence under RSA chapter 507-E.

#### IV. Dr. Jackson's Deposition

The defendants next argue that the trial court erred by declining to admit Dr. Jackson's discovery deposition as evidence. Both parties deposed Dr. Jackson in 2001. Several weeks before trial, however, he informed defense counsel by letter, with no return address, that he would not appear at trial. The defendants argue, in conclusory fashion, that the letter was sufficient to show that Dr. Jackson was "unavailable" pursuant to Rule 804(b)(1) of the New Hampshire Rules of Evidence.

We review a trial court's evidentiary rulings under an "unsustainable exercise of discretion" standard. Carignan, 151 N.H. at 416. We reverse the trial court's determination "only if the rulings are clearly untenable or unreasonable to the prejudice of a party's case." Id.

Rule 804(b)(1) creates a hearsay exception for the prior testimony of an unavailable witness when the witness gave that testimony at another hearing or deposition. Barrows v. Boles, 141 N.H. 382, 394 (1996). A witness is "unavailable" when the witness "is absent from the hearing and the proponent of the witness' statement has been unable to procure the witness' attendance . . . by process or other reasonable means." N.H. R. Ev. 804(a)(5). Rule 804(a)(5), therefore, permits admission of a deposition only if the proponent adequately shows that he cannot procure the witness to testify. LeBlanc v. Publow, 129 N.H. 117, 120 (1987).



The trial court found that the defendants did not adequately show that they could not procure the witness to testify, stating: "I interpret Rule 804 to require that efforts be made to procure the witness's attendance and, frankly, based on what I've heard, I don't believe there's been an adequate effort to procure the witness's testimony." We agree. The defendants did not argue at trial that they had no way of contacting Dr. Jackson. In fact, defense counsel admitted twice at trial that Dr. Jackson had provided counsel with a post-office box at which to reach him. Defense counsel did not send a letter explaining the importance of Dr. Jackson's attendance at trial or attempt in any other manner to further communicate with him. It appears from the record that defense counsel received Dr. Jackson's letter and did nothing to persuade him to appear at trial. Based upon the above, we conclude that the trial court properly exercised its discretion by declining to admit Dr. Jackson's discovery deposition as evidence.

## V. Damages

### A. Emotional Distress and Reluctance to Seek Treatment

The defendants argue that the trial court erred by allowing a damage recovery for the plaintiff's claims of emotional distress and reluctance to seek treatment when no such instruction was before the jury. The plaintiff responds that the defendants waived this argument by failing to properly object at trial.

"It is well established that a party must make a specific and contemporaneous objection during trial to preserve an issue for appellate review. This requirement affords the trial court an opportunity to correct any error it may have made and is grounded in common sense and judicial economy." Broughton, 152 N.H. at \_\_\_, 152 N.H. at \_\_\_, 880 A.2d at 391 (citations omitted). All objections to a jury charge are waived unless taken on the record before the jury retires. Super. Ct. R. 72; Daigle v. City of Portsmouth, 129 N.H. 561, 583 (1987).

The trial court gave a broad instruction on damages. The court stated that the damage award should be "full, fair and adequate" and that the award should compensate the plaintiff and make her whole. The trial court did not specifically instruct on emotional distress, reluctance to seek treatment, or on any other damage claim that the plaintiff made. After the jury instructions, the trial court gave both parties ample opportunity to object to the instructions. If the defendants wanted to exclude any consideration of emotional distress or reluctance to seek treatment in the damage award, they should have asked the court to instruct the jury that it could not award such damages. The defendants failed to do so. Because the defendants did not object to the instructions that permitted the jury to award damages for emotional distress or reluctance to seek

treatment, the defendants are precluded from arguing that we should not consider such damage claims when reviewing the amount of damages awarded.

### B. Remittitur

The defendants finally argue that the trial court erred by denying their motion for remittitur. The defendants assert that the damage award was excessive.

A trial judge has the responsibility to review a verdict. Carignan, 151 N.H. at 415. The trial court may disturb the verdict as excessive if the amount is conclusively against the weight of evidence and if the verdict is manifestly exorbitant. Id. "The proper standard for the trial court's review of a jury award is whether the verdict is fair . . . . Whether remittitur is appropriate rests with the trial court's sound discretion. Absent an unsustainable exercise of discretion, we will not reverse the trial court's decision." Id. (citations omitted).

In determining the propriety of the damage award, the trial court considered uncontroverted evidence that the plaintiff was handcuffed and placed in a jail cell overnight. The trial court found that this experience restrained her liberty and created both a physical impact and a psychological impact. The trial court considered testimony from the plaintiff's therapist, who stated that the incarceration exacerbated the plaintiff's alcoholism. The therapist testified that the plaintiff suffered from feelings of shame and low self-esteem due to her incarceration. The therapist also testified that the plaintiff's experience at Frisbie, and subsequent incarceration, made treatment of her psychological issues more difficult, because the plaintiff became reluctant to trust medical professionals. A friend and employee of the plaintiff testified that, after the plaintiff's incarceration, her mental state deteriorated. The employee stated that the plaintiff missed work more frequently, reported feeling humiliated, experienced significant losses of both appetite and sleep, and, on multiple occasions, called the employee crying in the middle of the night. The plaintiff testified that, after the incarceration, her depression and thoughts of committing suicide intensified, she withdrew from social activities, her abuse of alcohol increased, and she resigned from her job at the Somersworth Fire Department because she anticipated being fired after showing up to work intoxicated. Based upon the above facts, we conclude that the trial court did not commit an unsustainable exercise of discretion in finding that the award was neither against the weight of evidence nor manifestly exorbitant.

Affirmed.

BRODERICK, C.J., and DALIANIS and DUGGAN, JJ., concurred.

## **Appendix Item No. 5**

**Counsel's affirmation  
in support  
of applicant's petition  
for habeas corpus.**

**COUNSEL’S AFFIRMATION IN SUPPORT  
OF APPLICANT’S PETITION  
FOR HABEAS CORPUS**

Alexey V. Tarasov, an attorney duly admitted to practice in the courts of the state of Texas, affirms, under penalty of perjury, pursuant to Texas Civil Practice and Remedies Code § 132.001, as follows:

1. I represent applicant Jeffrey McClatchy and am fully familiar with the facts herein.
2. Since about September of 2018, I have been engaged in preparing a habeas corpus petition on behalf of Jeffrey McClatchy.
3. My efforts to gather new evidence in the matter of Jeffrey McClatchy have led me to travel from Texas to New Hampshire.
4. During my travel, I visited the Supreme Court of New Hampshire and thoroughly examined the files from a case *Carlisle v. Frisbie Memorial Hospital*, 152 N.H. 762 (2005).
5. I have studied the facts and the legal claims of the New Hampshire civil from the relevant court records.
6. The New Hampshire civil case arose from Carlisle’s arrest during a visit to a hospital.
7. At the time of her detention in the early morning of May 6, 2000, Heidi Carlisle operated a childcare business and worked for a local fire department. Tr. I, 23.<sup>1</sup> She had a history of depression and alcohol abuse. Tr. I, 29. On May 5, 2000, she had five beers during the day and two mixed drinks for dinner. Tr. I, 28-29. After dinner, Ms. Carlisle decided to go to a hospital. Tr. I, 29. She chose Frisbie Memorial Hospital (“Frisbie”) because it was nearby and on a prior visit, she had seen a poster there advertising comprehensive services. Tr. I, 30. She arrived between 11 P.M. and 12 A.M. Tr. I, 32. She had her blood pressure taken and then saw Dr. John

<sup>1</sup> Reference to trial transcripts from *Carlisle v. Frisbie Memorial Hospital*, stored at the New Hampshire Supreme Court.

Jackson, an emergency physician, who performed a brief exam. *Id.* The exam was negative. *See* Plaintiff's Exhibit 2. She told him she had been drinking and had thoughts involving using a rope. Tr. I, 33. In filling out the medical intake form, under neuro/psych, Dr. Jackson circled depressed affect and suicidal ideation, and under clinical impression, ethanol intoxication and suicide ideation. *Id.* at 227. Dr. Jackson then left the examining area and told her he was going to get her some help. Tr. I, 34. When Dr. Jackson returned, he came with an officer from the Rochester Police Department who told Ms. Carlisle she was going to jail and put handcuffs on her. Tr. I, 37. Ms. Carlisle was then driven to the Strafford County jail in a police cruiser. Heidi Carlisle testified at trial that after her discharge from incarceration she began drinking more frequently and her depression worsened, which in turn affected the quality of her work. Tr. I, 57-59. She had to resign her fire department position because she appeared at a call with alcohol on her breath. *Id.*

8. Ms. Carlisle eventually brought three causes of action against the defendants: (1) violation of the Emergency Medical Treatment & Labor Act against Frisbie; (2) professional negligence against Dr. Jackson; and (3) violation of the Patients' Bill of Right against Frisbie.

9. The jury found for the plaintiff on all three counts. At the conclusion of the proceeding, Heidi Carlisle won a \$500,000 judgment against Frisbie Memorial Hospital.

10. In examining the files from the above-mentioned civil matter, I discovered the following passages that are relevant to Jeffrey McClatchy's habeas petition:

**Q.: In fact, the evening that this occurred, the Frisbie incident occurred, you are aware that according to the Rochester police, you made a claim, at first, and later withdrew it, you first made a claim that you were sexually assaulted at the jail. Isn't that correct?**

**A.: Um, I didn't make a claim about being sexually assaulted at the jail here. I know that I have a history of having flashbacks to when I had been, um. As far as what the Rochester PD says, I can't – I can't account**

for what they're telling you. Whether or not I was possibly having a flashback at the moment that I was speaking with him, uh, whoever it is, I don't know.

*See* Tr. 239.<sup>2</sup>

....

**Q.:** In fact, it was an exhibit at your deposition, but I'll show it to you. Written by an Officer Wayne Perrault, and he says, in part, that you advised him that you were sexually assaulted, correct?

**A.:** May I read it?

**Q.:** Sure. Absolutely.

*See* Tr. 240.

....

**Q.:** And you told to Dr. Hanna, did you not, and this would have been in April of 2003, just less than a year ago, that, quote, "I make accusations that I am being sexually abused by whoever is with me." Didn't you say that to Dr. Hanna?

**A.:** I believe that I presented it to him as if other people have made that, have made that claim, that I've talked about it. I was fishing from him, um -- I know that when people have flashbacks they're not completely, you know, with it, their mind is someplace else. So, I believe that my conversation with him about that was ... pretty much to try to find out whether or not I was, um, experiencing flashbacks when I wasn't aware of it.

*See* Tr. 244.

....

**Q.:** The whole statement is, in quotes. . . . "I struggle with depression and all my therapists hate me. When I drink alcohol I have flashback of sexual abuse that happened when I was 18. I can't be alone. I make accusations that I'm being sexually abused by whoever is with me." . . . .

**A.:** I don't know what to say about that, actually. Um, I remember presenting it to him that -- I know that through our deposition that that

<sup>2</sup> Reference to trial transcripts from *Carlisle v. Frisbie Memorial Hospital*, stored at the New Hampshire Supreme Court.

was something that you mentioned to me, and I did not have any recollection of that at all. Um, I know that I'm not the most, the best well-versed person when I'm with therapists, um, so I believe that I was attempting to find out from him whether or not, um, flashback occur when I'm not aware of them.

*See Tr. 245.*

11. In the course of the New Hampshire lawsuit, Ms. Carlisle said to her psychiatrist that she accuses of sexual assault whoever she happens to be with when she drinks. In the New Hampshire case, she accused the security guard at the hospital initially of sexual abuse, but then said that was just because of intoxication.<sup>3</sup> She also made a complaint against Strafford Guidance, a psychiatric facility that she was offered to go to in lieu of spending the night in jail. *Id.* She also considered filing a suit against her psychiatrist in Florida. *Id.*

12. The fact that Heidi Carlisle had a history of making up or imagining instances of sexual assault gives rise to an inference that she likely was not genuine in her accusation of Jeffrey McClatchy.

<sup>3</sup> Transcripts of closing arguments in *Frisbie* at 3-4.

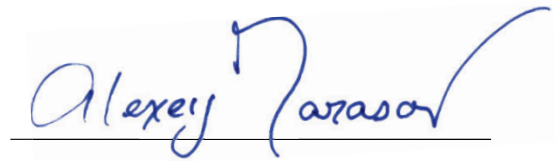
**Unsworn Declaration under Texas Civil Practice and Remedies Code § 132.001**

My name is Alexey Tarasov.

My date of birth is: 12/15/1985, and my address is: 5211 Reading Road, Rosenberg, Texas 77471.

I declare under penalty of perjury that all information contained in the Counsel's Affirmation in Support of Applicant's Petition for Habeas Corpus, is true and correct to the best of my knowledge.

Signed in Fort Bend County, Texas, on this date: 4/29/2020



Signature



## **Appendix Item No. 6**

**Memorandum from the  
Harris County District  
Attorney's Office, Dec. 6,  
2012.**



RIP  
call

**Patricia R. Lykos**  
**DISTRICT ATTORNEY**  
**HARRIS COUNTY, TEXAS**

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**INTEROFFICE MEMORANDUM**

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**TO:** File  
**FROM:** Jill Foltermann  
**SUBJECT:** Jeffrey McClathcy 1366886  
**DATE:** December 06, 2012  
**CC:**

CW: [REDACTED]  
[REDACTED]  
[REDACTED]

- CW was living in Houston when the offense happened
- She moved here in June 2012 – going to court reporting school – was supposed to stay until March
- CW met Δ outside of a liquor store outside the apartment complex she was living at
- CW was there to get liquor. Δ looked a little lost and sad – she said hi
- CW started talking to Δ and he said someone just dumped him there and he didn't have a place to go
- CW felt sorry for him and took him to her apartment CW wanted to try to help him out
- CW had already had a couple of drinks and she picked up a bottle of tequila
- Δ had one shot and CW drank the rest
- CW ended up hitting on him and they had consensual sex
- Δ said he was afraid of the man that left him there
- Δ said an attorney dropped him off and that the attorney had been making sexual advances
- After they had consensual sex, they went to Δ's temporary house to get his clothes
- Δ introduced her as his mom
- CW told Δ she had to sleep in the living room on a blow up mattress
- CW said the next morning she had a pretty bad hangover – she didn't really sleep that night because she had such a hang over
- CW had been throwing up very frequently
- Δ heard CW being sick and asked if she needed anything
- CW fell asleep after dawn

- CW woke up – CW didn't know what time it was because she doesn't have a clock or watch
- In the afternoon, they talked in her room
- CW says they talked about having sex and she said it was a mistake and that she had way too much to drink
- CW told Δ her roommate would probably freak out if she came home and found Δ there
- CW suggested they exchange personal information and they did
- CW started talking to him about adoption and how he could get benefits in FL
- CW told him she had always wanted to adopt someone
- Δ gave her a photocopy of his ID (he had an extra copy)
- Δ knocked on the bedroom door later and asked if she had any asprin
- CW told him to go to the kitchen
- Δ knocked on the door again saying he couldn't find it
- CW got out of bed and unlocked and opened the door
- Δ had a big steak knife and he had the knife up in the air pointed at her
- Δ pushed CW back into the room
- CW was in shock at this moment
- Δ didn't say anything or look angry – he just looked serious
- Δ didn't say anything at all
- They struggled a while – the knife was in his hand
- CW says the knife never touched her skin
- Δ ended up overpowering her on the bed – the knife was still in his hand
- At some point during the struggle, Δ pulled his pants down and his penis was exposed
- CW says she grabbed Δ by the balls and Δ didn't even flinch
- CW removed her hands from his testicles and Δ still had the knife in his hands
- Δ dropped the knife and started strangling her
- Δ had his thumbs right below the place where your adams apple would be
- Both hands were around her neck
- CW thought she was going to die
- Δ strangled her until she passed out
- CW passed out – during the whole thing she kept thinking this was how she was going to die
- When CW came to, she was on her back
- CW could see down his right side
- Δ had his pants pulled down past his butt
- Δ was on top of her and she felt a pressure across her body
- CW says things were still pretty hazy
- CW remembers feeling an intense heat on her chest and shoulders
- CW thought she was on fire
- CW was wearing a night gown with a robe over it that was binding her
- CW felt like she really needed to get the robe off
- CW started freaking out a little and saying she had to get it off and Δ didn't like this
- CW told him to try to help her get it off
- Δ tensed up and bound her more by holding it tighter
- Δ took off her robe and nightgown
- Δ turned CW over and started having anal sex
- CW told him that it hurt
- Δ pulled out from inside her anus and said "you've never had anal sex before have you"
- CW told him no and Δ said he was going to try doing something else
- Δ licked her anus with his tongue and penetrated her again
- CW told Δ it hurt again

- Δ pulled out and rolled CW over
- CW looked at Δ and said “i think you’re really good looking, I’ll do whatever you want, just please don’t kill me”
- They started having vaginal sex again
- CW looked at her computer and suggested they go to her bank account and she would take out however much \$ he wanted
- Δ continued to have vaginal sex with her
- Δ stopped, got off of her and started crying
- Δ was standing in the doorway and said “I don’t know why I do these things”
- CW said “hey, it’s ok, we all make mistakes”
- CW was trying to calm him down – she didn’t want him to freak out because she didn’t know what he was going to do
- CW asked Δ if she could get out of bed and put clothes on
- CW was trying to figure out how she could get out of the apartment
- CW put a top on and some jeans
- CW asked Δ if he would like to go smoke a cigarette
- CW said she was trying to think of ways to get out of the room
- They went to the back porch
- CW was thinking it was great because she was on the balcony
- CW thought about jumping from the balcony, but thought she would hurt herself
- CW thought about screaming, but was worried if she screamed, Δ would take her back into the apartment and kill her
- CW asked Δ to go in the bedroom to get her purse and her shoes and that she had \$\$ she would give him
- Δ got CW her purse and shoes and brought them back to her
- CW was thinking she should have run
- CW asked Δ to go get something else for her and Δ did
- As soon as CW realized he was in the bedroom, she unlocked the door and ran through the apartment complex
- CW ran to someone and told them someone just raped her and tried to kill her
- This person dialed 911 and CW took the phone
- CW saw a cop pull up – Cop stopped the car about 50’ away
- Neighbors pointed out which way Δ ran
- The cop was there, but CW hadn’t made it to the cop yet
- CW made it to the cop and went with the police officer
- Another police officer got Δ
- The police officer took CW to her apartment and CW doesn’t really remember things exactly because she was in shock
- They told her an investigator was coming
- An investigator and another officer came into the apartment and interviewed her
- The police recovered the knife
- They took her night clothes and her sheets/pillows
- The police took photos of her
- CW says her throat was sore for a while – few weeks
- CW says her voice is still not normal
- CW had a cat scan at the emergency room last week – the scans showed no bone damage – no permanent damage
- CW says she didn’t really notice any bruising develop on her neck, but she did have difficulty swallowing for a few days
- CW had a rape kit done at Herman memorial – the nurse took photos of her entire body



- CW thinks Δ has a luggage tag that has her address on it
- CW says Δ took a red bag that had a luggage tag on it that had her name/address/phone number
- CW doesn't want Δ to have this
- Δ told CW her name was "Roma" and that he preferred to be call Jeff or Jeffrey
- CW says that at no point did they discuss any sexual fantasies regarding staged rape, or rough sex
- CW says she had alcohol and a prescription medication aderall
- Δ had a shot of tequila, CW doesn't know if Δ had any drugs other than that
- CW says she hasn't smoked marijuana for about 3 weeks
- CW says she didn't smoke anything that night
- CW says that after Δ had anal sex with her, she told him he was really good looking and all he had to do was ask – Cw was trying to keep from getting killed
- Δ had told CW that he was taking medication for psychotzphrenia and some form of disorder
- CW really believes Δ will kill someone, especially if he doesn't take his medications
- Δ told CW that his father killed his mother
- Δ is from Russia
- CW was under the impression that he was sent from Russia to the US to a foster home
- CW says he's been adopted before and was maybe living in and out of foster homes
- Δ told her that his foster parents didn't want to have anything to do with him
- A secretary at the DA's office told CW that someone said a lady kept calling the DA's office to see how CW was doing and that they wanted Δ to stay locked up because he was a threat

R

I:

P: CW is aware that Δ had a 3<sup>rd</sup> degree felony that was reduced to a misdemeanor. Cw looked this up online. CW believes Δ has 5 arrests for assault this year

CW says she is going to be nice – CW's intentions were to truly to help him. She doesn't appreciate that he tried to kill her. CW knows that Δ is young and will probably get raped in prison because he is pretty. CW would rather see him go to a psychiatric hospital. Cw thinks Δ should serve at least 10 years (ie 20 year sentence) because she really thinks that he will do this again. CW thinks probation is not appropriate

12.6.12

- CW said she is more concerned about the Agg Assault than the Sex Assault

- 1.3.13 • CW called to say officers inappropriately touched her
- lead investigator came out (Hoang)
  - said a jury would never believe her
  - officers kept saying they  $\neq$  have
  - cop came up behind her and touched her on her butt, over clothes (to see if she was bleeding)
  - CW hit cop 3 xs & knocked him  $\downarrow$  to ground
  - CW spoke to Lt. today & made a complaint
  - Diaz 7.957.5420 (Eusebio Diaz)
  - CW = filing complaints against investigator Hoang & and 2 other officers (she  $\neq$  know his name)

## **Appendix Item No. 7**

**Letter addressed to the  
sentencing judge from  
Jeffrey McClatchy.**

February, 2014

Dear Judge Thomas:

My name is Jeffrey McLatchy. I am presenting the following information about myself and my life for your consideration at my PSI hearing. I was born in Russia and English is my second language. My reading and writing skills are not very good so my attorney, Kurt B. Wentz, has written the following for me based on our conversations at the Harris County Jail where I have been incarcerated since my arrest.

#### Family

I was born Roma Bolshakov on June 12, 1993 in Pskov Russia. Pskov is twenty minutes from St. Petersburg. I have two older sisters, Angela and Valintina, and an older brother, Alex. I have two younger sisters, [REDACTED] and Katia. [REDACTED] is now known as [REDACTED] [REDACTED] and Katia is now known as Hope Nash. Valintina was known as Faith Nash. She has now returned to Russia and lives with Angela in Pskov.

---

My mother and father, Natasha and Ura, were alcoholics. My father would beat my mother with his hands and choke her. At various times he scared her with an ax and knife.

The Russian equivalent of CPS intervened in our family's life because of my parents drinking. As a result all the children were put in an orphanage. We stayed there about six months before we were allowed to go home. In the orphanage I was picked on and made fun of. While I was in the orphanage I was also sexually abused on several occasions by three other boys.

Two years after we were reunited with our parents my father killed my mother. He came home one winter night about 1:00 AM and told us to go outside and get our mother. We did not do what he wanted instead we



stayed in bed and took the bus to school the next day. As we walked to the bus we saw my mother's clothes by the side of the road. That day I was pulled from my second period class and escorted outside where I saw my father crying in the back of a police car. He said he did not kill her and was released by the police two days later. My mother was only thirty two years old when she died and was as healthy as my father. I believe my father killed my mother. He had tried to kill her once before and had a new girlfriend when it happened. I went to my mother's funeral. Her face was blue and swollen.

After my mother's death the children were split up and placed in two different orphanages. Valantina/Faith and I were placed in one. [REDACTED] and Katia/ Hope were placed in another. We remained in the orphanages until we were adopted and brought to the United States. Valantina and I saw very little of our younger sisters while we were split up.

There were about four hundred children in the orphanage Valantina and I were sent to. I remember crying and becoming depressed over my mother's death. While I was in this second orphanage I was sent to a mental health hospital because I began to cut myself.

### Childhood in Russia

My brother, sisters and I grew up with my father physically and verbally abusing my mother. Except for [REDACTED] and Katia/Hope we all began to drink and smoke at a very early age. I believe I was no more than five or six when I began to drink and smoke. This continued even after we were placed in first orphanage.

Growing up we would steal from our parents. My brother and I would go around town stealing metal and reselling it in order to make money. Our behavior was not that different than many other children our same age in Pskov.

My parents were not wealthy. One of the homes that we lived in had no plumbing. Some of our other apartments were slightly better.

My brother is an alcoholic with emotional issues. He has been placed in mental hospitals on several occasions. I remember him banging his head



against the wall for no apparent reason. I am told that we look alike. Angela is much more stable than he.

### Religion

I am Roman Catholic. When I was little church was part of my life. As I got older it stopped being part of my life.

I have returned to the bible over the last several months and taken one introductory bible school class and classes on the Gospel of Mark, Luke and John. Copies of my certificates of participation are attached as Exhibits A, B, C, and D

### Adoption

After my mother's death Valantina and I were placed in one orphanage while [REDACTED] and Katia/Hope were put in another. We rarely saw one another.

When I was nine we became aware that we might be adopted. When I was nine my sisters and I came to Houston to visit our adoptive families. After three weeks we returned to our orphanages in Russia. About two years later our adoptive mother's came to Russia to complete the adoptions. They paired an older child with a younger child. [REDACTED] and I were adopted by Gena McLatchy while Valantina/Faith and Katia/Hope were adopted by Sherry Nash. Unlike in Russia I was now able to see my sisters in their adoptive home in Missouri City.

### Childhood in America

Gena McLatchy is my adoptive mother. There was no adoptive father. She had a son, Taylor, with whom I never got along. Neither had any Russian language skills and I had no English skills. My relationship with Ms. McLatchy began good but gradually worsened. I did not like the way she disciplined my sister and would get mad at her when she did. She would occasionally hit me with a belt when she thought I needed discipline.

Because of my anger problems I began to get counseling and receive medication. The medication made me feel like a zombie. I liked the counselors that I had. There was a Russian doctor that helped me. My sisters adjusted much better to the adoption and life in the United States than I did. They seem to have gotten along much better in school as well.

At some point Ms. McLatchy placed me in the Mental Health Clinic in Shiloh. When I completed my stay there she refused to pick me up. I believe that it was at that point that Ms. Nash began to care for me. She was eventually given temporary custody and I went to live with her in Missouri City. I liked Sherry and found her to be funny and nice. She treated my sisters very well and did not hit them. Unfortunately I did not listen to her the way I should have and got angry in her house when I should not have. Eventually I was taken from her home and placed in a series of residential centers, group homes and foster homes. This is the CPS phase of my life. I did not adjust well to living in these facilities and often ran away or got in fights. Keith Lasco was my case-worker during the later phases of my CPS phase.

I believe the only reason I was adopted was so my younger sisters could be adopted. Valatina/Faith has returned to Pskov and lives with Angela in an apartment right across from where Ura and his mother live. Because different courts handled the two adoptions Ms. Nash was ordered to pay child support into a fund for Valantina/Faith so that when she turned eighteen she had \$8,000 and could return home. Ms. McLatchy was never ordered to pay child support and I had nothing when I turned eighteen.

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### Education

I had no English language skills when I came to America. I did not do well in school in spite of my teachers efforts. I was frequently made fun of because of the way that I spoke and performed in school. I would react by getting angry and mad. I lost interest in school and as I got older began to skip class. It did not help that I was older than most of my classmates.

My sisters adapted much better than I. They had fewer problems learning English and did better in school. I have been told that Hope is very good at volleyball, soccer, and basketball.



I love my sisters very much and miss them. I have not seen them since before I was arrested. Not seeing them is one of the worst parts about what has happened to me.

#### Extra Curricular Activities

I never participated in any sports in school; however, I enjoyed playing soccer and basketball with kids in our neighborhood. Most would say that I am athletic and good at both these sports.

#### Criminal History

A copy of my criminal history is attached as Exhibit E.

#### Alcohol and Drugs

My mother and father were alcoholics. Angela, who is also known as Mary, Alex, Valantina/Faith and I all began to drink and smoke at an early age. I believe I was about five or six when I started. This behavior was not as uncommon in Pskov as it might be in the United States. We continued to drink and smoke after we were placed in our orphanages. Sometimes we would get caught and disciplined but would continue to do it like most others. The staff did not really seem to care that much.

---

When I first got to America I did not smoke, drink, or use any drugs.

As I got older these vices became part of my life. When I was sixteen I met an attorney by the name of Jay Sharma. He introduced me to track cocaine and it became a part of my life. Mr. Sharma repeatedly made sexual advances towards me that I did not want or encourage.

#### Mental Health Issues

I was first placed in an orphanage along with my brother and sisters because of my parent's alcoholism.

After my mother died the children were split up and put in two different orphanages. We did not have much contact with one another while we were separated. I cried and got depressed over my mother's passing. At some point I began to cut myself and was sent to a mental hospital.

My brother Alex has been in and out of several mental health facilities.

I began to see counselors and therapists after I began living with Ms. McLatchy. Dr. Tran is one that I remember. There was also a Russian doctor whose name I forget. I have been diagnosed bipolar and prescribed drugs. I am presently getting medication while in the Harris County Jail.

### Present Offense

Jay Sharma took me to Austin just before this happened. He bought me some things in Austin and wanted to have sex. I attempted to call the police on him in Austin. On the way back he left me off at a liquor store in Cypress without any warning. I had never been to this part of town and had no place to go. I saw a lady go into the liquor store when she came out she began to talk to me and invited me to her apartment for drinks. Her name is [REDACTED]. She poured me drinks of Patron from the bottle that she had bought. She drank out of a larger bottle. I think it was a wine bottle.

Within an hour we had sex that was as much her idea as mine. Afterward we continued to talk and drink. At some point she wanted to get more to drink. I drove her back to the liquor store because she was too intoxicated to drive. The clerk at the store would not sell anything to [REDACTED]. We went back to her apartment and continued to talk and drink. We continued to talk and drink. We discussed the possibility of my moving in with her.

Later we drove to where I had been living so I could pickup some things to stay with her. I used a reddish bag that she gave me to put my things in. I introduced [REDACTED] to Kevin and referred to her as my "new mom" this freaked her out. I drove to Kevin's because [REDACTED] was too intoxicated to drive.

When we got back to [REDACTED]'s apartment we continued to talk. She put a mattress on the living room floor for me to sleep on. She slept on a mattress in her bedroom. Throughout the night she went back and forth between her room and the bathroom because she was sick. Sometime during the night I also began to feel sick.



Sometime early in the morning we began to talk again. At this point [REDACTED] said that I could not move in with her here in Houston and would have to wait until she moved back to Florida. That is where she said she was from. She asked me to write down my name and phone number so that she could contact me. I did as she wanted. She also gave me some conditions that I had to live up to in order to be able to go live with her in Florida. In the course of our conversation I know I showed her some of my documents and pictures of my sisters.

At some point we each went back to where we had been sleeping. At some point I began to feel ill. [REDACTED] had given me some pills from a large bottle that she kept before we went to Kevin's. She said that she sold the pills to other people and could get \$1,500.00 a bottle for them. I asked [REDACTED] for some medicine she told me to go to the kitchen. When I did I could not find the medicine she was referring to. I returned to her room with a knife from the kitchen. It was then that I did the things that have caused me to come before you for punishment.

When it was over I realized how wrong I had been for doing this to her. I began to cry and told her I had never done anything like this before. [REDACTED] said that I was a good person and that she would still help me. I believe [REDACTED] even told the police that I broke down and cried and expressed my sorrow to her. We eventually got dressed and went out on the balcony and smoked some cigarettes.

---

When [REDACTED] asked me to get her purse I did so. It was then that she left and called the police. I got the bag that she had given me to put my stuff in, packed it, and jumped off the balcony. I was arrested a short time later.

After being arrested I talked to the police and gave them a confession. I would like the court to listen to my statement.

I was sincere in telling [REDACTED] that I was sorry about what I did.

#### Statement for Sentencing

What I did was wrong and will never happen again even if you release me from jail tomorrow.

When I said I was sorry to [REDACTED] I meant it. My sorrow was real then as is my sorrow now. She had attempted to be good to me and I violated her trust. The alcohol and pills are no excuse.

I am older now and believe I can learn from this horrible event.

If the court wants I will write a letter for the court to send to [REDACTED] expressing my sorrow to her.

I know I am going to prison and it scares me. I remember what happened in the orphanage and I do not want it to happen again.

I think I can make something of myself and be a better person if I am given the chance.

I would like to thank Gena McLatchy and Sherry Nash for all they tried to do for me. I am sorry to disappoint them just as I am so sorry to have disappointed my sisters.

Sincerely,

---

Jeffrey McLatchy  
Jeffrey McLatchy

I have never touched any  
of my sisters inappropriately  
Jeffrey McLatchy

## **Appendix Item No. 8**

**Police statement given  
by the victim.**

### CW Statement

– My name is Deputy Investigator David Hoang (phonetic) with Harris County Sheriff's Office. I'm assigned to the Adult Sexual Crimes Unit with the Harris County Sheriff's Office. We're located at [REDACTED] I'm conducting a sexual assault investigation on the case number 12-152229. Today is Saturday 11/3/2012. The time is 7:37 PM and your address is...

– [REDACTED] Florida [REDACTED].

– Okay, what's your address in Houston, Texas?

– [REDACTED].

– Telephone number.

– [REDACTED]

– You date of birth.

– [REDACTED]

– That makes you how old.

– 44.

– Your driver license with the state?

– Florida.

– And your driver's license number?

– I don't know. I have to look.

– Are you here to give me a voluntary statement?

– Yes.

– Why am I here, mam?

– Because I called the police for somebody trying to kill me and somebody raping me.

– Okay, so, what? What are we talking? What? What am I here to do for you?

– To? Uh, make sure this man does not come back here and kill me.

– Okay, so, am I investigating the assault part of this deal or the sexual assault? What do you want me to do?

– I'm under the impression that you're investigating both the sexual assault and what I call the attempted murder.

– Okay.



- How long did you know the suspect?
- Less than 24 hours.
- Do you know his name?
- Roma.
- How do you spell that?
- I’m assuming R-o-m-a.
- So, how did you and the suspect meet.
- I met him outside the liquor store across the street.
- When did you meet him?
- Uh, last night.
- Approximately 8:55.
- Last night, will be Friday, November the second?
- Yeah.
- 2012.
- And that liquor store across the street. You said.
- Yes. Not in it. I met him outside of it.
- How do you know you were raped?
- How do I know I was raped? Um, because he pushed me in the bedroom with a knife onto the bed and pulled his pants down and told me he was going to rape me and for me to cooperate with him. I did not cooperate with him. I was trying to fight him. And he, uh, started choking, me until I passed out. And I, uh, tried fighting him. I got, I regained consciousness.
- Did he sexually assault you before he choked you out or after he choked you out?
- His pants were down before he started choking me. He pulled, not all the way down. But he had pulled his penis out. And I knew his intentions were to have sex with me.
- So, did he sexually assault you before he choked you out? Or when you were passed out.
- When I was passed out and after I regained consciousness.
- How do you know that you were sexually assaulted when you’re passed out?
- Because I woke up with him on top of me.
- And did you tell him? Did you give him consent to have sex with you? Did you tell him anything?

- After I regained consciousness? Yes. I told him he could do whatever he wanted. I told him I wanted to cooperate. Please don't hurt me. If you wanted to have sex with me all you had to do was ask. Um I was struggling with him and he turned me over and put his penis in my rear end. And I told him that that hurt, that I didn't want to do that.
- Where did the incident happen at?
- In my bedroom.
- Okay.
- At the apartment complex that you gave me, provided to me?
- Yes.
- And it happened today, November 3, 2012, which is a Saturday. About what time?
- About 30 minutes before 911 was called.
- What time?
- I don't know.
- Maybe six o'clock.
- I really have no idea. I had been in bed for most of today.
- Roughly 6 PM. 7:42 right now.
- It was about 30 minutes before 911 was called. That's all I know.
- Where's your phone.
- I didn't use the phone. I ran out of here and I used somebody else's phone.
- Okay, so, roughly what? 6 to 7?
- Yeah.
- Have you had sex with anybody? 24 hours to 96 hours before the sexual assault.
- I had sex with him last night, consensually. Other than that, no.
- Okay. So, go ahead and tell me on Friday, on the 2 around 8:55 PM, what happened?
- I was going to liquor store to get a small bottle of tequila. I saw him outside. He looked kind of lost to me. I said hello. Went to liquor store, got what I needed. When I came outside, he was still there. He looked kind of lost. So, I said, hey, you know, how's it going, to strike up a conversation with him. He told me. I said, I can remember the exact words, but I said something: looks like, did somebody leave you here? Are you? You look like you don't want to be here. And he explained to me that a lawyer, um, from when he spent, uh, time in Austin with a lawyer and the lawyer left him there. And he said that the lawyer, uh, uh, that he was homeless. That the lawyer, he did have some place to stay temporarily with the guy, but he, uh.

– Speed up. So, you met him. You had a conversation? What else?

– I and I said, won't you come home with me? I'll help you. And, uh, so, he came here with me. Uh, and I had the tequila that I'd bought. He had probably about a shot of it, and we had sex probably within the hour. Um, we start talking more, and he told me that he, uh you know, wanted somebody to help him, that I didn't want the lawyer to know. You know, the lawyer knew where he lived, and he didn't want anything to do with lawyer anymore. He was living with a man named Kevin. And he wanted to go back to where he was staying. That man, Kevin, uh, helped homeless people and he wanted to get his stuff and come here and stay here. And I said, that's fine. Let's do that. I don't want you to be uncomfortable. You know, he's told me that lawyer gave him crack and that the lawyer was doing sexual games with him. I told him I couldn't drive. I said, you know, I've had too much to drink. You haven't. You know, if we go pick up your stuff, you need to drive. We stuck it in my GPS. We drove to Kevin's house and he told Kevin that, uh, he was leaving, and he called me his mom, um, to Kevin. He said this is my mom. Ah. Kevin didn't seem to... Whatever. You know, he's just fine. So, he picked up a few things that he had at Kevin's. We drove back here, um, I started feeling very ill, and I, uh, I threw up till the sun rose. I was going in and out of the bathroom throwing up.

– Okay.

– I felt very ill.

– When you had sex last night and you say it was consensual, was rough sex? How was it?

– I actually hit on him. I put my arm around him, and I said do you want to have sex pretty much.

– So, when you are having sex, was it rough?

– No.

– Did he spank you in the ass, did he pull your hair, did he choke you?

– Nothing.

– Did you do the same thing to him?

– No, I didn't. We didn't hit each other. It was very passive. And, uh, uh, it was passive. It wasn't rough at all.

– Not rough. Okay. Okay.

– Let's go to this morning. So, you're up all day, all night. In the morning time, what happened. Why is he sleeping out here for? Well, tell me what happened. So, in the morning?

– Well, before I went to sleep. You know, I said, uh, you know, you're looking for somebody to help you, I said, uh, if you want to view me as being your mom, I said, I can't sleep with you. You know, you can't do that. I said, you know, here I had two mattresses in my room. I pull the top one off, put out here, and I said, spend the night here, Put your things in my closet. You know, we'd already been to Kevin's. That's that. You know. Um, you know, so, he slept here.

Um, he was up almost all night and he knew I was getting up and throwing up on and off all night until dawn. Um, and, uh, I told him I said, you don't want to talk to you. I'm getting sober. I'm thinking, Oh, my God. I should not have brought this guy here with me. And I said, uh, you know, we're going talk a little bit later. I say, I feel too ill right now. Okay. Um, later on, I invited him to come into the bedroom. I was laying in bed.

– What time?

– I have no clue. But I want to say probably prior, around 3:30 in the afternoon and he came into the room. I said, please have a seat at the desk, and he did. And I said, you know, uh, I'm gonna help you, but it really, uh it wasn't a good idea for me to have you come here. I said, my roommate's gonna freak out. I tell her not to bring people home all the time. I said, you know, I want to take you back to Kevin's. You seem comfortable with him. I said, I know you don't want the lawyer, uh, to be around you anymore. I said that Kevin seems like a helpful person you've described him that way. I said, this is what we're gonna do. I said, uh, you know, I told you, you could come to Florida and I'll help you. I said, I've been through adoption process in Florida, the pre-classes or whatever they call those. And I said, I know that you being 19 years old, that they typically in Florida help people until they turn 21. I said, they pay for your college education, they'll pay for medical and what not. But what I'd like you to do is write down my name, you know, write my full name. Write down my phone number. He did. He had two pieces of paper. He wrote down my name and phone number. And then I asked him, and I told him to write down on there, that you're gonna look into getting your GED. I said, I don't think you've got a computer. I said, you know, maybe Kevin can help you with that. He said Kevin would. So, he said he was gonna write that down. And I said, what I'm gonna do is when I start feeling a little bit better, I said, I'm going to get up, and we're gonna drive you back to Kevin's house, and you're gonna stay there. I said I'm leaving here in a month, but that'll give you, get you time to figure out what you need to do. I said I'll call Social Services on Monday, I said, give me, write your name down on a piece of paper. Um, and, uh, your phone number. I'm assuming he did that. Um, and we talked more about, a little bit more about that. I don't remember exactly what it was, but it was along those lines. Then you know, he left the bedroom and I got up. And I, uh no, it was getting some, something to drink out of the refrigerator, and he gave me a piece of paper. He had a box with case stuff. He said it was SSI stuff. He's trying get Social Security. And he said here, I've got an extra piece of paper. It has my information on it. I said, good. You know, that way, when I call Social Services on Monday, you know, I can be able to start maybe getting the ball rolling for you and figure out what it is you need to do. I took that and I put that in my bedroom. I still felt ill. Um, I locked my bedroom door. I always lock my bedroom door, it's a habit, and I, uh, I lay back down. Then later he knocked on my door and he asked me if I had anything for, you know, headache. And I said, yeah, I do. I explained to him where it was through the door; I didn't open it, and I was laying in bed. I said, I don't feel well here. There it is. And he told me he couldn't find it. And, you know, I thought this is kind of odd because my pantry's like Walmart. I mean, you can open it up and everything is very visible. But he couldn't find it. And I said, hang on. I got out of bed and I opened the door. And when I opened the door, he had a knife in his hand, up in the air, and he pushed me back.

- How was the knife. How is he holding the knife?
- He's holding the knife like this with blade down.
- Down to the ground?
- Yeah. Okay.
- Like, I mean, it wasn't facing the ground, but, I mean, he was holding the handle and was at an angle.
- And which hand was he holding it with?
- I think it was his right hand, but I'm not 100% positive, but I think it was his right.
- So, he's holding the knife and what else happened?
- He pushed me onto the bed, and he, uh and I was freaking out. I was...
- Did he say anything to you at all?
- Um, he said something to me, but I can't remember exactly what it was. I don't remember. And he, I was fighting him, and he told me to calm down. That, that he would kill me, that I needed to cooperate with him. And I was just, uh, scared. And I, uh, he dropped the knife and his pants were not all the way down. He had pulled his penis out, his pants weren't all the way down.
- Just how far down was it?
- Far down to expose his penis?
- Okay.
- That's it. It wasn't pulled down over past his rear end. It was just pulled down in front. And, um, he started choking me, and I thought to myself, I'm going to die. I'm gonna die here today. And he, uh, choked me until I passed out and I...
- You didn't yell or scream.
- I did scream, but I stopped screaming because I couldn't because he was choking me. I couldn't, I couldn't breathe. Um, I couldn't get any anymore voice out. Um, yeah, I passed out and he, I woke up with him on top of me and I, I grabbed him in the crotch, and I, I, uh, thought it would have caused a sense of severe pain, but he didn't flinch. Um, he just said, don't do that, you know, and I just I started. I just told him you could do whatever you want. I said, I don't mind. You know, I said, you know what? I don't mind having sex with you. I said, you know, all you would have had to do was ask. And I was trying to appease him, so he wouldn't kill me and said, you know, I will have sex with you. You know, I'll do whatever you want.
- And when, when you, when you woke up, he was on top of you, was he already inside you?
- I don't know.

- So, you don't know if I was inside you?
- I don't know. All I know is he was on top of me.
- So, he was just on top and his pants were down.
- His pants were down. So, this is around six something, right?
- Yes.
- I told him I was really hot. I said, I feel really hot, you know, trying to think of a way to get a little bit less bound. You know, I said I feel really hot, you know, I had the blue nightgown on, and I had a black long, it was very binding. I said, you know, I'd like to take it off, you know, let me take it off. You know, I was thinking maybe it will give me an opportunity to try to be able to escape or fight him better. And he said, you can take it off. I kept begging him to let me take it off. And I tried taking off myself, and he wouldn't let me. He was, uh, pushing me down because, because, uh, he didn't want me to get up. Um, and he helped me take it off, and, uh, he turned me over, and he started having anal sex with me, and I said, you know, that really hurts. Please don't do that, you know, don't, don't, don't do that. You know...
- Explained to me what anal sex is.
- He put his penis in my rectum.
- Okay?
- And I told him that hurt. I said, you know, I don't like this. He said you've never had anal sex before, have you? And I said no. Then I said I don't like it.
- So, when you woke up and he's on top of you, with his pants down, did he threaten you or anything? You had a conversation. What? Did he say anything to you? When you woke up from being choked out?
- He just was telling me to calm down and to not...
- So, he tells you, calm down to not what?
- To not fight him.
- Okay. So?
- So, I, I, I, know I grabbed him; I know I grabbed him in the crotch.
- Where in the crotch?
- What do you mean Where in the crotch? I grabbed, just grabbed his balls.
- Okay, balls. You need to give more detail? You can leave it general. I need details, details, details, explicit details.
- OK, I grabbed his balls. He didn't, he didn't flinch it all.

- Okay. Did he threaten you? Did he scream, did he yell?
- He said calm down.
- Okay.
- So, I calmed down. So, I did. And then after that, I, you know, I told I wanted to take the stuff off, you know. And he helped me take it off.
- Then who brought up the sex part?
- There was no question about sex. It was obvious.
- Who brought it up? Did he say let's have sexual... Or did you bring it up – okay, you can have sex with me, all you have to do is just ask. Who brought it up first, you or him? After you woke up from being choked out?
- Um, it was obvious to me that he was trying to have sex with.
- I understand. But who brought it up?
- I did.
- You did? I brought it up to him.
- And did he threaten you to bring that up, or you just brought it up.
- I brought it up because I was trying to get him to not kill me.
- Did he threaten you at that time when you woke up and he's on top of you? Did he brandish a knife again? When you woke up?
- No, he dropped the knife right before he started choking me. He dropped the knife. Um, you know...
- You brought up the sex part. So, you end up having anal sex. What else? How many times did he penetrate you anally?
- Twice. And I, I brought up the sex part to him, and I just said, listen, you know, you don't, you know? Please don't kill me. I'll do anything you want. I said if you wanted to have sex with me, all you would have had to do was ask me. You don't have to, you know, force me like this. I said, you know, you're a really good-looking person. I said I was trying to make him feel good about himself. I just said, you know, I, all you would have had to do is ask. And I would; you don't have to be forceful. I would be more than happy to have sex with you because you're good-looking. You're a real nice person. Everything's gonna work out. Okay?
- Okay. When you, when you say please don't, I'll have sex with you; please don't kill me. I just asked you, did he threaten you or do anything? When you brought up the sex part and you told me no.
- I don't understand your question. He was threatening me the whole time.

- I just asked you that. Was he threatening you? You said no.
- Well, not verbally. He didn't threaten me after I was...
- Stop right there. Prior to me turning on the recorder, what did I tell you? The question on my part is the stuff that you give me, right? And I tell you, if you give me different answers, okay? During the course of the investigation, I'm gonna be tougher on you during the interview. You now gave me three different stories.
- Okay? He did not verbally threaten me after I passed out from him choking me. When I woke up, he was physically threatening me by being on top of me after choking me until I passed out.
- And I asked you was his penis inside? You say, you don't know.
- I don't know.
- Okay, so, you have a no sex after it hurts. And he penetrated twice. What else happened after that?
- He turned me over and he had vaginal sex with me. And then after that, how many times? How long was that vaginal sex?
- Maybe five minutes.
- Was he wearing a condom?
- No.
- And he threatened you during the sex.
- Not verbally. He was physically forceful.
- Okay. You say you've allowed him to have sex with you after you woke up.
- I did.
- Okay.
- Yes.
- So, after you have sex what else happened, did he ejaculate in you? Did he ejaculate on top of you.
- I don't know if he ejaculated or not.
- Okay, so, after he finished sex, how do you know if he finished sex?
- Because he got off of me and I stood up and he started crying.
- Okay?
- He said he was really sorry that he's never done anything like that before and that he just was crying really hard and told me that, uh, he was very sorry. And I told him it was okay. I said, it's



OK. You know, You're a good person. Everything's fine. You know? I'm still gonna help you. You know, I asked him. I said why don't we smoke a cigarette. Um, and I put some clothes on. Not much, I suppose. A little clothes on. He pulled his pants up. He was still crying. We came out to the balcony and I was thinking, you know, you know, I can jump off this balcony. I thought, you know, I can escape from this guy because he seems stable to me. And there were kids in the pool, and I thought, you know, if I scream, you know, he could very easily pull me back into this apartment really quickly or fight. If I make a gesture that looks like I'm gonna jump off this balcony. He can still pull me back in this apartment really quickly. So, I sat there and he cried for gosh, a good 15 minutes. And I talked to him and I said, it's OK. Everything's gonna be okay. He kept on apologizing to me. And he said that God was gonna...

– Where was your cell phone?

– I don't know where the cell phone was?

– What was the last time you had the cell phone?

– Last night.

– Where?

– Uh, in my purse was the last time I had it.

– And you didn't see the phone in there when you pulled out your wallet?

– No. I didn't look; I didn't look to see if it was in there.

– Okay, so, you're telling me the reason why you, you told him to have sex with you was because of what he did prior, to you, as in having a knife at the front door, pushing down to the bed, choking you and you passing out?

– Right.

– Where you passed out last night when you were throwing up or anything like that, when you were sick?

– No.

– Okay. Did he hit you?

– Last night. Ever? No, he's actually never hit me.

– Okay, um, so, you have consensual sex last night around nine hours, nine something, 9:55 or 10 o'clock last night. Then around 6 P.M., he comes to your door holding a knife, which we can't find a knife. What kind of knife is it?

– It was a kitchen steak knife.

– OK, did you happen to pick it up and put it up somewhere?

– No.

– Okay, so, well, the deputies told me two or three of them searched the room and I couldn't find a knife at all. Okay, so, we're gonna have a problem with that, uh. Then he pushed you down, just choked you. And was his pants down already before he entered the room? Or did he pull it down?

– His pants were up when he entered the room. Okay. He started pulling his pants down when, uh, when he pushed me on the bed.

– And were you fighting him?

– Yeah.

– How? Um, I was trying to push him off of me.

– How come you weren't screaming for help?

– I did.

– That's when he started choking me.

– Okay.

– And I couldn't scream anymore because I couldn't breathe.

– Ok? And did you tell him? Get off, get off. What? What are you doing or anything?

– I told to stop. I said, please don't kill me. Just begging him to not kill me.

– Okay. Okay. So, what do you want me to do with this, this case right here. What do you want me do with this case?

– I think he's a dangerous person. I think he's unstable. I think that he needs a lot of help. And I do not want him coming back here because I, I don't want to kill me. Okay, so, let's say if I present this case to the district attorney's office and got charges and the case might take maybe 1 to 2 years to go to court, are you going to come back here and testify.

– I will.

– So, you want to put this guy in jail?

– I do. I think he needs to be in jail.

– What do you want to put him in jail for?

– For almost killing me.

– Okay.

– That's the most important thing to me. When I, when he was choking me, I thought to myself, I didn't see my life between my eyes. I thought to myself, they're gonna be finding a body. When my roommate gets home, they are going to find a body. He's killing me. And then I passed out. My neighbors downstairs, I saw them right after I called the police. These people called the

police and I got on the phone with, you know, I use their cell phone whenever. I calmed him down on this balcony, I said, everything's gonna be okay. You know? Why don't you get your shoes? Get my purse and I'll; first thing is that once you get my purse to give you some money, so that when you go back to Kevin's you know you can get food, you'll be OK. He got my purse when he went to go the bedroom to get my person.

– And how come you didn't yell and scream for help?

– I, I wasn't sure. I thought, you know, I could jump off.

– Here's the thing I am not asking you for a breakdown and then you trying to make yourself look better in this case. Listen to me. Stop. It's a simple question. When I asked you a question, don't try to overanalyze this question. Don't try to make yourself look good in this interview, okay? You gave me three different stories. I need to, I need you to answer the question. I asked you. OK?

– Yes.

– Simple as that, okay? Was my question tricky?

– No.

– Okay. Don't overanalyze it. Don't try to make yourself look good, okay? I don't want you to make yourself look good. Just tell me what happened. Don't go back and tell me this happened. This happened, no. Either tell me one story and stick with it and be fluent about it. Don't go back when I asked you a question and add more things to do. You understand me?

– Yes.

– That's what you've been doing. Now that's what I say. That you're changing your story. Do you understand me?

– I'm sorry. I'm nervous.

– I understand that. You need, you need to understand, you need to give me what the facts are. Okay? Don't add anything more. Don't add anything less? I need the facts. I need details. Do you understand me?

– Yes.

– Don't say, oh, well, he's only here. I think I should jump. No. Question was how come you didn't yell for help. When he was in your bedroom, he wasn't around you.

– I understand.

– These apartment walls are thin. People can hear through the apartment wall. People can call 911 and say, hey, my neighbor is yelling for help! Call the police! Get the police over here. There's two police officers that live in this apartment complex. They do apartment security. One is a state trooper. Once's an HPD officer, they could have come here and saved you. How come you did not yell for help?

- I wasn't sure if, uh, I'd be able to get away with him, away from him. I just wasn't sure. I envisioned him coming back with a knife and before help could get to me. Him killing me. It's what I...
- How come you didn't just walk out the door?
- Well, I, he brought me a purse, and I thought to myself, Jeez, I should, I should, I should have.
- When he was in your room right, how come you didn't walk out and yell for help.
- I didn't know if I could. I didn't know if he was gonna be coming around the corners. I was trying to go that way, and I was worried that I wouldn't have time.
- Ok, does your door have a deadbolt key where you have to use a key to unlock?
- No.
- So, it has two deadbolts, right.
- Right?
- So, you just flip 1, 2, boom, out and yell for help and run down, couldn't you?
- Yes.
- Okay.
- How come you didn't do that?
- I did end up doing that.
- No, how come you didn't do that at the time when he was in the room?
- Because I didn't think I'd be able to make it to the door in time.
- Okay. Then, what's the difference between before and then what you did after.
- The difference is that I thought I may not have another chance. I'm gonna purposely send him back into my room, and I'm gonna, I'm gonna bolt.
- How can I prove that his intention was to kill you? His intention was to rape you. How can I prove that?
- I don't know.
- How can I prove that? That, uh, that in court. That's the thing I need to prove is the intent.
- Um, I think that he, I think that the way you could prove that he tried to kill me is because he choked me until I passed out.
- Okay. And if he said that you were having rough sex, then what?
- I don't know. I mean, I'm not, I'm not a judge. I don't know, but I've...

– So, you have a lot of opportunity to get help. But you're waiting to the very end. You sat and talked to him for a good while. He broke down and cried. You smoked a cigarette with him on the balcony. You had a lot of opportunity to yell for help when people were outside. You didn't do that. When he went to the room, you didn't go out again, right?

– Right.

– Then you waited. Then you waited until you sent him back inside to run for help.

– And did you run? Or did you gradually just walk?

– I ran out the door. Both of the deadbolts. Both of the locks were locked, and I, I thought to myself when he came back, I'm stupid. I should have tried to run, so, I sent him back in the room. And when he went back into the room, I undid both of those bolts. They were both, you know, locked. I ended both of them and I just ran. I ran to the other end of the apartment complex, telling people I needed help.

– And that's the thing that, that I'm asking is. How come you didn't do that at the beginning? After you finished having sex and were talking. And he was crying. You were trying to comfort him. Why not do that? That at that time why did you try? Talk to him? Why did you not make an effort to leave if he choked you out trying to kill you? How come you did not leave? How come when you woke up? Why offer him sex? Why not yell, scream for help? The walls in these apartments are thin. Why not yell for help? Scream for help?

– I had already screamed for help until he had choked me until I passed out. And I was worried that if I was trying to appease him because I didn't think I would have, he was really crazy. And I felt that I wouldn't have enough time for somebody to help me. I figured in my mind the best way would be for me to just make him trust me. And, uh, you know, make him happy and that, you know, I would. My chances were better that way.

– Okay. You really go do a rape kit at a hospital. Wait 6 to 7 hours. Eight hours?

– Yes.

– For the sexual assault kit.

– That's fine. Yes.

– Okay. Do you have any other information that I need to know in regards to this case?

– The neighbors downstairs, I saw them after I had called the police, on the phone with police, they knew something was wrong. They came up to me and said, listen, we were really worried with all this banging, you know. I said some guy's trying to kill me. So, they might have information they can give to you. Okay, they saw him jump off the balcony, too, which is why they started looking for me.

– OK, well, they say nobody saw him actually jumping. Okay? And then it goes back to my question. How come you didn't yell for help if the neighbors heard banging then? I don't think they have time. I really thought that if I yell for help right now, he's gonna pull me back in this

apartment, kill me and yeah, sure, people are gonna come and help me, but I'm gonna be dead. That's what I thought.

– And wouldn't you think if you're not gonna yell for help, he might kill you anyway?

– No, because I thought that I was... Well, I think there was a good chance that he would kill me. But I was calming him down. He was already calming down. He was crying. He was showing remorse. I was trying to get him to be as calm as he possibly could be and in a better frame of mind. So, I felt that that was my best shot of being able to survive.

– So, you want to press charges? In what? The sexual assault? Him choking you and almost killing you. What do you want? To make this a report? Put him in jail. What do you want to put him in jail for?

– I think that he should be in jail for attempted murder.

– Okay, so, you don't wanna do sexual assault at all. You just want assault, that's all. I'm here. I'm asking you. Do you want to put him in jail for the assault? Do you want to put him in jail for the sexual assault? What do you want to put him in for?

– I want him to go to jail so that he doesn't...

– I understand that. And just answer my question. Do you want him to go to jail for assault by choking you and almost killing you? Or the sexual assault?

– Oh, um uh, I think he should go to jail for both. But more important, one to me is for the choking me.

– Okay, back to my original question. What do you want him to go to jail for?

– For trying to kill me.

– Is that it?

– So, do you want to do a sexual assault kit for this? A rape kit, since you want him to jail for him assaulting you, do you want to do a rape kit? Yes or no?

– Yes.

– So, you want to pursue the rape too, or, no.

– Yes, I do. Because outside he told me he had sexual problems.

– Why did you even have sex with him the night before then? I didn't know that before.

– Okay, simple question. Why would you invite a stranger to your house, period?

– Because I was stupid, and I was trying to help him. I thought so.

– Okay? You invite him in. You drank alcohol with him, then you voluntarily have sex with him the night before, right? Why? Do you always do this?

- No.
- Then why now?
- Because I think, because I have been drinking and I wasn't thinking properly and it was stupid.
- Are you married? Back in Florida?
- No.
- You have kids.
- No.
- You have a boyfriend.
- No.
- Why would you invite a complete stranger to your house to drink? He could be a murderer.
- I know.
- But why did you invite him?
- I don't know.
- I was stupid.
- I was trying to help him. Actually, I invited him over here, not with intentions of having sex with him. I invited him over here because I genuinely wanted to help him. I felt sorry.
- You're the one that told me that you started the sexual advances.
- I did.
- Okay. Couldn't help him tomorrow, say, hey, meet me here tomorrow and I'll help you when you do that. Couldn't you do that?
- Yes.
- Why did you have to invite him over to your house? That's one of the things I have to explain. Why did you bring him to you? You didn't know he had problems? When you first invited him? You found out that he had problems when he was at your house, not there. So, why did you invite him back inside the house? It was not to help him quit and stuff. You told me perfectly clear that you met him outside the liquor store. You thought he was cute. You talked to him. You invite him back to your apartment. That's, that's what you said. Simple as that.
- I did not say that to you. I did not tell you that. I did not say that he was cute while I was at the liquor store. I told you that he would, that I told him when he was on top of me after I passed out, that I told him he was good-looking.
- Okay, no you said. Okay, let's stop right there. You say you were helping him?

– Right.

– That’s why you brought him over here. You have never had a personal conversation out there at the liquor store. How do you know he had problems for you to help him?

– I, that’s not what I said to you. He told, I looked at him and I said, it looks like somebody left you here. Don’t you think? It didn’t seem quite right. And he said that a lawyer had left him there, that they’ve been in Austin, that they, that he was homeless and that, um, he did have some place to stay but essentially was homeless. And that this lawyer was playing sexual games with him and gave him crap. And I said why don’t you come back to my house. I told him I bought some tequila. I said, come here. I’ll help you.

– Okay, back down. Back to the – why would you invite somebody that you don’t know, that told you he already has problems to your house, that he admits using drugs already, to your house. You say you don’t need any extra problems, right?

– I did it because I was stupid. And I had already been drinking. I bought more liquor at the liquor store, bought some tequila, and...

– So, how long have you been drinking that day?

– Uh, I don’t know. I had a bottle of wine. Uh,

– How, how long have you been drinking? That day before you went to the liquor store.

– Probably several hours.

– So, you’ve been drinking several hours?

– Slowly. Yeah. I drink wine with the man down here. He didn’t have wine.

– But let me ask you something. Let’s be blunt. You saw that guy there. You felt horny. That’s why you invited him up here.

– No. When I brought him here...

– Okay, okay, listen, stop. Listen, I need to understand. Why would you bring a stranger to your apartment, since you’re already intoxicated, too. That’s what I need to make sure, make clear, because when we go to court and this case is presented, they’d be like, I wouldn’t invite somebody over to my house if I don’t know him.

– I know.

– I mean, to show that there was no malice, no hidden agenda to all this. And one thing is, I need to understand why would you invite somebody you don’t know to your house? Then after drinking with him, make sexual advances to him and you still don’t know who he is? You don’t know his background. But then the next day, after he choked you and has sex with you, you still sat there and talked to him instead of trying to get him to leave or yell for help.



– While I was talking to him, I was thinking in my mind I could jump off the balcony. Can't jump off the balcony. You know, he's gonna be able to grab me before I could jump off the balcony and pull me back in the house and kill me. I viewed him, him being very unstable. I was just trying to calm him down. I was thinking in my mind of the ways that I could escape. That would give me the best possibility of being able to leave here without him killing me before somebody could help me.

– Is that it?

– If that's it, I'm gonna stop anything at 8:25.